



California Regional Water Quality Control Board San Diego Region



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TO: John H. Robertus
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FROM: 
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DATE: September 27, 2006

SUBJECT: WRITTEN TESTIMONY AND STAFF RECOMMENDATIONS ON KEY
ISSUES FOR THE PUBLIC HEARING ON INVESTIGATION ORDER
NO. R9-2006-0076 MODIFICATION REQUEST

This memorandum constitutes my written testimony and the staff recommendation on the key issues for the public hearing on Investigation Order No. R9-2006-0076 (Investigation Order). The Investigation Order requires certain named dischargers in the watersheds of lagoons designated as water quality limited segments (see Supporting Document 1) to collect water quality data and submit monitoring program reports to support the development of total maximum daily loads (TMDLs) for the impaired lagoons (including sloughs), adjacent beaches, and Agua Hedionda Creek. The key issues for this hearing are listed in the Notice of Public Hearing, dated September 11, 2006 (Supporting Document 2).

BACKGROUND

On July 19, 2006, the California Regional Water Control Board, San Diego Region (San Diego Water Board) issued Investigation Order R9-2006-0076, *Owners and Operators of Municipal Separate Storm Sewer Systems, California Department of Transportation, Hale Avenue Resource Recovery Facility, and North County Transit District Responsible for the Discharge of Bacteria, Nutrients, Sediment, and Total Dissolved Solids into Impaired Lagoons, Adjacent Beaches, and Agua Hedionda Creek*. The Investigation Order was issued as authorized by Water Code sections 13267 and 13383, to persons identified as, or suspected of being, responsible for discharging pollutants (bacteria, nutrients, sediment, and/or total dissolved solids) into the following

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water quality limited segments listed on the *2002 Clean Water Act Section 303(d) List of Water Quality Limited Segments*¹:

- Santa Margarita Lagoon (HUC 902.1)
- Loma Alta Slough and Pacific Ocean Shoreline (HUC 904.1)
- Buena Vista Lagoon and Pacific Ocean Shoreline (HUC 904.2)
- Lower Agua Hedionda Creek and Agua Hedionda Lagoon (HUC 904.3)
- San Elijo Lagoon and Pacific Ocean Shoreline (HUC 904.6)
- Los Penasquitos Lagoon (HUC 906.1)
- Famosa Slough and Channel (HUC 907.1)

REQUEST FOR HEARING AND MODIFICATION TO THE INVESTIGATION ORDER

The County of San Diego, on behalf of the Responsible Dischargers (Dischargers) named in the Investigation Order, has requested a public hearing for the San Diego Water Board to reconsider issuance of the Investigation Order because the specified schedule for conducting studies and report submittals does not provide the Dischargers sufficient time to:

1. Negotiate and enter into formal agreements between multiple federal, state, and local agencies;
2. Obtain funding;
3. Competitively bid and award contract work; and
4. Submit and obtain review and approval of the Monitoring Program Workplan and Quality Assurance Project Plan.²

Staff asked the Dischargers to specify in more detail the modifications to the Investigation Order they were requesting. In a follow-up submittal, the Dischargers requested the following specific modifications (described as “key issues” in the Notice) to the Investigation Order:

1. Change the due date for the Monitoring Program Workplans from August 1, 2007 to September 1, 2007 (Directive A1, first paragraph);
2. Require a process to ensure the adequacy of the Order’s directives to meet the overall goal of the Investigation Order which is to produce water quality data reports that characterize dry weather flow and storm flow influenced water quality in the water quality limited segments in order to complete

¹ For list of persons identified as, or suspected of responsible for discharging pollutants, see Table 1 of Supporting Document 2.

² Letter dated August 18, 2006 (Supporting Document 5).

development of TMDLs, and load and wasteload allocations and reductions, as described in the second paragraph of Directive A1;

3. Remove or modify the study questions and timeline associated with conducting the special studies (Directive A1.e,e1,e2 and e3 and Directive A8);
4. Change the October 1, 2007 through April 30, 2008 schedule for wet season monitoring to October 1, 2008 through April 30, 2009. Change the May 1, 2008 through September 30, 2008 schedule for dry season monitoring to May 1, 2009 through September 30, 2009 (Directives A2.iii and A3.iii);
5. Change the requirement for operation of a rain gage from October 1, 2007 to October 1, 2008 (Directive A6.iii); and
6. Change the due date for the Quality Assurance Project Plans from September 1, 2007 to March 1, 2008 (Directive A9, first paragraph).³

STAFF RECOMMENDATIONS

We have carefully considered these requests to modify the Investigation Order and have the following recommendations.

Key Issue No. 1

We agree with this proposed modification. An additional month to prepare the Monitoring Program Workplans is reasonable. The original due date allowed the Dischargers time between submittal of the Workplan and initiation of the field activities described in the Workplans. However, as long as the Dischargers are prepared to initiate the field activities described in the Workplans by October 1, 2007, postponing the due date for submitting the Workplans by a period of one month is acceptable.

Key Issue No. 2

We do not agree with this proposed modification. Three drafts of the Investigation Order were circulated between July 2005 and June 2006 for review and comment and revised in response to the comments received. The finalized version of the Investigation Order issued by the San Diego Water Board provides sufficient flexibility for the Dischargers to propose modifications to the monitoring programs if the goals of the Investigation Order could be met through alternative means (see Directive A11). Furthermore, staff intend to work closely with the Dischargers as the Workplans are formulated. If the Dischargers and/or the San Diego Water Board identify the need for additional data, the Investigation Order can be amended to require the collection and inclusion of additional data in the monitoring program reports.

³ Email dated September 7, 2006 from the County of San Diego (Supporting Document 5).

During several meetings, the Dischargers were encouraged to coordinate closely with the San Diego Water Board staff and collaborate with Dischargers from the other watersheds in developing Workplans and Quality Assurance Project Plans. By working with staff, and with Dischargers from the other watersheds, we believe the goals of the Investigation Order can be adequately met.

Key Issue No. 3

We do not agree with this proposed modification. The special studies are needed to provide the technical basis for the San Diego Water Board's development of site specific nutrient numeric targets for the lagoons (including sloughs) impaired by nutrients/eutrophic conditions. The special studies include estimating macrophyte and periphyton biomass, sediment oxygen demand, and nutrient flux from sediment. The Investigation Order provides a reasonable time schedule of approximately 13 months for the dischargers to prepare the Monitoring Program Workplans and approximately 14 months to initiate the field studies.

The Southern California Coastal Water Research Project (SCCWRP) has proposed a project currently being considered for grant funding under the Proposition 50 Coastal Nonpoint Source Pollution Control Program, administered by the State Water Resource Control Board. The data and reports from the SCCWRP proposed project can be used to meet the directive in the Investigation Order for the special studies. However, in the event the SCCWRP does not receive the grant and does not conduct the proposed study project, the Dischargers must provide the data required from the special studies and include the special studies in their Workplans.

Key Issue Numbers 4 through 6

We do not agree with these proposed modifications. The Dischargers contend in their August 18, 2006 letter (Supporting Document 5) that the Investigation Order implementation schedule of approximately 14 months does not provide sufficient time to prepare for the field work. Modification request numbers 4 through 6 would essentially postpone the monitoring field work for a period of one year. This delay, in turn, would set back TMDL development and adoption from 2009 until 2010, which is not acceptable for the following reasons.

The waterbodies addressed in the Investigation Order are listed as impaired for bacteria, nutrients/eutrophic conditions, sediment/siltation, and/or total dissolved solids on the 2002 Clean Water Act Section 303(d) List of Water Quality Limited Segments. The State is required by the federal Clean Water Act to move forward expeditiously with the development of TMDLs for the listed impaired waterbodies. Additionally, the coastal lagoons and estuaries of the San Diego Region are ecological, recreational, and aesthetical treasures. The lagoons support recreational uses, estuarine habitat, wildlife habitat, marine habitat, warm freshwater habitat, shellfish harvesting, and biological

habitats of special significance necessary for the survival and well being of people, plants and wildlife. These uses of water serve to promote the economic, social and environmental goals of the people of this Region. Restoring the water quality needed to support these beneficial uses is one of the San Diego Water Board's highest priorities. Further delay of this already delayed project does not support the mission of the San Diego Water Board.

The U. S. Environmental Protection Agency (USEPA) does not support additional project delays that would occur if the monitoring work is further delayed.⁴ The current State-Federal grant workplan for 2006-2007 includes commitments for the San Diego Water Board to move forward with the development of TMDLs for the waterbodies included in the Investigation Order. The USEPA is anticipating the completion of the Lagoons TMDL Project in 2009. Additional delays in the project may place further federal funding for this project, as well as for the San Diego Water Board's TMDL program, at risk for future USEPA grant funding.

The Dischargers have been provided approximately 14 months, which we believe is sufficient time, to prepare for and initiate the field work required for the monitoring program reports. In fact, most of the Dischargers were informed that the Investigation Order was forthcoming as early as July 6, 2005. The first draft Investigation Order was released at a public workshop held on July 6, 2005 for review and comment. The draft was revised in response to the comments received and a second draft Investigation Order was released for additional public review and comment on August 11, 2005. The due dates given in the first and second drafts of the Investigation Order were August 1, 2006 for the Monitoring Program Workplans, September 1, 2006 for the Quality Assurance Project Plans, and October 1, 2006 to be ready to initiate the monitoring program field work.

Subsequently, the Santa Margarita Lagoon was included as part of the Lagoons TMDLs Project and several additional Dischargers were named in the draft Investigative Order from both the Santa Margarita watershed, and the watersheds of the other impaired lagoons. In January 2006, the second draft Investigation Order was re-circulated to all the identified Dischargers along with a written summary of the comments received thus far at the time. Staff held a meeting on February 6, 2006 for the benefit of the newly identified Dischargers to learn about the Lagoons TMDLs Project and discuss the second draft Investigation Order.

On June 9, 2006, a third draft of the Investigation Order was released to all the Dischargers for review. A draft Technical Report, providing the information and technical analysis relied upon to develop the findings and directives in the Investigation Order, was also released with the third draft Investigation Order for review and

⁴ Letter dated September 18, 2006 (Supporting Document 6).

comment. In the third draft of the Investigation Order, the due dates were revised, based on comments received from the Dischargers, to postpone the Monitoring Program Workplans to August 1, 2007, the Quality Assurance Project Plans to September 1, 2007, and the initiation of the monitoring program field work to October 1, 2007. The third draft of the Investigation Order provided the Dischargers an additional year from the original due dates in the first and second drafts. Another meeting was held with the Dischargers on June 27, 2006, and comments were received and considered by the San Diego Water Board. The final Investigation Order and Technical Report were issued on July 19, 2006.

Staff has never indicated during meetings and other contacts with the Dischargers that the Investigation Order would not be issued. Therefore, all of the Dischargers have been aware of the Investigation Order since as early as January 2006, and many since July 2005. The staff has provided all the named Dischargers at least 6 months to comment on the drafts of the Investigation Order. Under the terms of the final Investigation Order issued on July 19, 2006, the Dischargers are not required to begin the monitoring field activities for another 14 months.

The Dischargers were provided ample notification of the intentions of the San Diego Water Board to issue the Investigation Order. The Investigation Order provides approximately 13 months (July 19, 2006 until September 1, 2007) to prepare a Quality Assurance Project Plan, and approximately 14 months (July 19, 2006 until October 1, 2007) to prepare for and initiate field activities described in the Workplans. It is possible that the preparation of a Quality Assurance Project Plan and preparation for field work can be performed concurrently with preparation of the Workplan to expedite the process. The schedule in the Investigation Order provides a reasonable balance between the public interest in moving forward expeditiously with completing the studies needed to develop TMDLs for the impaired waterbodies while at the same time taking into account the resources, both financial and technical, available to the Dischargers. Therefore, the staff does not recommend postponing the due dates for the Quality Assurance Project Plan and monitoring programs.